# IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

**R.S.A. No. 1756 of 1992 (O&M)**
**Date of Decision : 24.4.2009**

The State of Punjab & others

..... Appellants

Versus

Baldev Raj

..... Respondent

**CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA**

Present : Mr. R.L. Gupta, Addl. A.G., Punjab
for the appellants.

Mr. Hari Singh Mann, Advocate
with Mr. Kamaldip Singh Sidhu, Advocate
for the respondent.

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**VINOD K. SHARMA, J. (ORAL)**

This judgment shall dispose of RSA Nos.1756 and 1511 of 1992 titled as State of Punjab Vs. Baldev Raj and Baldev Raj Constable No. 779 Vs. State through Collector, Kapurthala and others. Both these appeals arise out of the same judgment and decree passed by the learned Addl. District Judge, Kapurthala.

For the sake of brevity, facts are being taken from RSA No. 1756 of 1992 titled as State of Punjab Vs. Baldev Raj.

The plaintiff / respondent invoked the jurisdiction of the Civil Court, to challenge the order of punishment dated 28.11.1987, passed by the Superintendent of Police, Kapurthala, as also of the appellate authority

dated 1.4.1998 passed by the D.I.G. Jalandhar, vide which five years approved service of the plaintiff / respondent, was ordered to be forfeited with permanent effect.

It is not in dispute, that the plaintiff / respondent, while posted at Police Station City Phagwara, went on casual leave for four days on 1.8.1986, and was to report back on 6.8.1986. The plaintiff / respondent failed to report for duty, on expiry of leave period but joined the duty on 2.3.1987, after an absence for 208 days.

It was pleaded by the plaintiff / respondent, that he could not report back for duty on expiry of the leave period, due to sickness, and also claimed, that the factum of his sickness was conveyed to the authorities.

The plaintiff / respondent was charge-sheeted, and after the enquiry officer found him guilty of the charges, he was imposed punishment of forfeiture of three years service with permanent effect.

The plaintiff / respondent preferred an appeal against the order of punishment. However, the appellate authority while dismissing the appeal enhanced the punishment to forfeiture of five years service with permanent effect.

The plaintiff / respondent challenged the impugned orders on the ground, that enquiry held against him was faulty. He also pleaded, that the order passed by the appellate authority enhancing the punishment, could not be sustained in law. Before filing the suit the plaintiff / respondent issued a notice under Section 80 C.P.C. for redressal of his grievances. However, as no response was received, the suit was filed.

The suit was contested, wherein stand was taken that the enquiry against the appellant was held as per the statutory rules. It was also the case set up, that the punishment awarded was fully justified in view of misconduct of proved willful absence from duty.

On the pleadings of the parties, the learned trial Court was pleased to frame the following issues :-

*"1. Whether the plaintiff is entitled to the injunction prayed for ? OPP*

*2. Whether the order of S.P. Kapurthala and D.I.G. Jalandhar range is incorrect and illegal ? OPP*

*3. Whether the plaintiff sent valid notice under Section 80 CPC ? OPP*

*4. Whether the suit is not maintainable in the present form ? OPP*

*5. Relief."*

The learned trial Court did not agree with the contention raised by the plaintiff / respondent, that the enquiry held against him was defective or that proper procedure was not followed. The Court held, that the enquiry was held in accordance with the Rules, and principle of natural justice were fully complied with.

The plea of the plaintiff / respondent, that the order of enhancement of punishment by DIG was void, was also rejected by the learned trial Court. The learned Court also did not agree with the contention of the plaintiff / respondent that enquiry was vitiated for non-grant of legal assistance. The plea of the plaintiff / respondent that punishment amounted double jeopardy was rejected by holding that the punishment coupled with

the fact, that the period of absence was to be treated to be spent without pay, could not be said to be double punishment.

Issues No.1 & 2, thus, were decided against the plaintiff / respondent.

However, issue No. 3 & 4 were decided in favour of the plaintiff/ respondent, as these were not pressed. The appellant preferred an appeal. In the appeal findings recorded by learned trial Court were not challenged on merits. Only the order of appellate authority was challenged on the ground, that on an appeal filed by the plaintiff / respondent, the punishment could not be enhanced.

The plea raised by the plaintiff / respondent was accepted and the appeal was partly allowed by setting aside the order of appellate authority while upholding the order of the punishing authority.

The State of Punjab i.e. the appellant / defendants challenged the judgment and decree passed by the learned lower appellate Court by RSA No. 1756 of 1992 by raising the following substantial question of law :-

> Whether the Civil Court had jurisdiction to interfere with the punishment awarded by the appellate Authority ?

Mr. R.L. Gupta, Addl. A.G., Punjab while appearing on behalf of the State contended, that the judgment and decree passed by the learned lower appellate Court cannot be sustained, as it is contrary to the settled law, that the Civil Court cannot sit in appeal over the decision taken by the

departmental authorities. The contention, therefore, was that while the learned Courts upheld that the due procedure was followed, it was not open to the appellate Court to have upset the order passed by the appellate authority especially when the plaintiff / respondent was found guilty of misconduct.

There is no force in the contention raised by the learned Addl. A.G., Punjab. The Civil Court can interfere in the order passed by the departmental authorities, in case, the order is totally perverse and against settled principle of law. The order passed by the appellate authority was on the face of it perverse as the appellate authority could not have enhanced the punishment on an appeal filed by the plaintiff / respondent. It is not in dispute that the State did not choose to file any appeal against the order of punishing authority.

The learned Addl. A.G., Punjab has also challenged that the judgment and decree passed by the learned lower appellate Court to be contrary to Rule 6.24 read with Rule 6.37 of the Punjab Police Rules. This contention raised by the learned Addl. A.G., Punjab is also totally misconceived.

It is settled law that appellate authority cannot enhance punishment on an appeal filed by the delinquent, unless the order was also challenged by the department. It is not in dispute that no appeal against the order of punishment was filed by the department.

The reliance of Rule 6.24 read with Rule 6.37 of the Punjab Police Rules is also misconceived as the rules only provide that on

enhancement of punishment, further appeal could lie to higher authority. It is nowhere laid down that the appellate authority can enhance punishment, in absence of any appeal by the department. On the appeal filed by the delinquent. The RSA No. 1756 of 1992 is, therefore, ordered to be dismissed.

## R.S.A. No. 1511 of 1992

**Baldev Raj Constable No. 779 Versus State through Collector, Kapurthala & others**

Mr. H.S. Mann, the learned counsel appearing on behalf of the appellant contends that the appeal raises the following substantial questions of law for consideration by this Court :-

1. Whether the enquiry held by the appellant / plaintiff was contrary to the statutory rules and in violation of principles of natural justice ?
2. Whether the order of punishment passed against the plaintiff / appellant could be sustained though it was proved on record to be in violation of principles of natural justice for want of assistance to the defendant / appellant ?
3. Whether the findings recorded by the departmental authorities were based on no evidence ?

The learned counsel for the appellant in support of the substantial questions of law contends, that in the present case the document

attached with the charge-sheet, were not supplied to the plaintiff / appellant, and furthermore the enquiry officer had not taken into consideration the evidence led, to show that the plaintiff / appellant was suffering from sickness while holding him guilty of absence from duty.

It is also the contention of the learned counsel for the appellant, that in the case the plaintiff / appellant was not provided with legal assistance to defend himself, thus, there was violation of principles of natural justice, therefore, the findings recorded, are outcome of misreading of evidence on record. It is prayed that the substantial questions of law be answered in favour of the appellant and the suit be decreed.

The contention of the learned counsel for the appellant cannot be accepted. The concurrent finding of fact has been recorded by the learned Courts below, that the proper procedure was followed in the departmental proceedings in the enquiry held against the appellant. There is admission of the plaintiff / appellant, that he had absented himself for 208 days, but the evidence led in support thereof, did not justify such long absence.

The appellant cannot be allowed to raise these contentions, in view of the fact, that before the learned lower appellate Court the plaintiff / appellant had only challenged the order passed by the D.I.G., Jalandhar, and not of the Superintendent of Police. It is not open to him now to challenge the said order in regular second appeal.

Para 6 of the learned lower appellate Court judgment reads as under :-

> *"6. While assailing the findings of the trial Court on issues No. 1 and 2, it had been contended only that the*

> *order passed by the DIG Jalandhar on 1.4.88 in the appeal preferred by the appellant was quite illegal. The counsel for the appellant, had concentrated his arguments only with regard to the order dated 1.4.88 and frankly conceding that the order dated 28.11.87 was valid and he did not challenge the findings qua that order recorded by the trial court. It was stressed that in an appeal, the punishment, could have been enhanced, the appellant authority (DIG) had acted illegally in enhancing the punishment particularly when there was no appeal from the side of the department."*

The substantial questions of law claimed, therefore, do not arise for consideration in view of stand taken before learned lower appellate Court. This appeal is also ordered to be dismissed but with no order as to costs.

24.4.2009 **( VINOD K. SHARMA )**
**'sp'** **JUDGE**